heriting his victim's property and cannot restrain his enjoyment of the property thus acquired.

It is to be regretted that the equitable doctrine enunciated by Dean Ames was not made the basis of this decision. The Pennsylvania case is undoubtedly correct as far as it goes, but it stops short of the true principle. The legal title, the *res,* does pass to the murderer as heir or devisee of his victim. But it should not be forgotten that Equity, acting *in personam,* compels one who by misconduct has acquired a *res* at common law, to hold the *res* as a constructive trustee for the person wronged, or if he be dead, for his representatives. It is this fundamental equitable theory that has been overlooked in nearly all the cases in which the question has arisen, and it is unfortunate that the case of *In re Houghton* did not prove an exception.

L. E. L.

EQUITY JURISDICTION—CAN A BLACKLIST BE ENJOINED?—Out of the struggle between the forces of united labor and those of capital have arisen many complicated questions of law. May organized labor lawfully strike for higher wages, shorter hours, or improved shop conditions? Shall employees be allowed to strike merely to compel a "closed shop"? May the members of a union institute a boycott against one who refuses to unionize his shop, by threatening to leave their employers unless the latter insist upon their customers refraining from doing business with him who employs non-union men? These are typical of the questions with which the courts have been often confronted.

The real cause of the difficulty is the fact that in these cases there arises a conflict between two apparent legal rights. As the employer has a right to employ whom he chooses and to trade with whom he will, so has the employee a legal right to refuse to work for whom he chooses, and for any reason whatsoever. True the employee owes to the employer a duty not to interfere with the carrying on of the employer's business, yet this same employee has a legal right to see to his own advancement. Should a working man be prevented from refusing to work for an employer who allies himself with the enemies of labor, even though this action of the employee would interfere with the employer's right to a free market?

Some courts have attempted to solve the problem by applying the following test: Is the object of the strike or boycott a legal one and are legal means employed in carrying it on? Under the application of this test strikes and boycotts for higher wages, shorter hours and improved shop conditions have been held to be lawful[1] and will not be enjoined unless they are carried on in an unlawful

[1] Pickett v. Walsh, 192 Mass. 572 (1906).

manner.[2] On the other hand a strike or a boycott instituted merely to compel a closed shop has been held not to be justifiable on the principles of competition.[3] In the debatable ground between these extremes the conflict of rights must be adjudicated as new conditions arise. In the absence of legislative action, it seems that this is the best test that can be applied.

The task of the Court is more difficult in regard to the counter action of the employer, the blacklist. When and to what extent should an employer be permitted to form a combination with other employers to refuse employment to striking employees?

In the first cases in which this subject arose the courts refused to enjoin the defendants on the ground that the rights alleged to be violated were personal and not property rights and that there were no approved precedents in equity for issuing such an injunction.[4] The later decisions recognized the fact that labor, as well as capital, is entitled to certain rights and protection from unlawful interference, and granted injunctive relief against combinations to blacklist.

In this connection it is interesting to note the recent case of *Cornellier* v. *Haverhill Shoe Manufacturers' Association et al.*[5] The Court refused to grant an injunction to prevent the employers from using a blacklist because of the doctrine, "He who seeks equity must come in with clean hands."[6] Nevertheless it was intimated that a blacklist is open to the same legal objections as is a boycott and if found to be unlawful will be enjoined. It seems that the decision is proper and logical. Once the courts have decided to lay down rules to govern this class of case, they should apply the same tests and the same rules without considering whether it is labor or capital, the acts of which are complained of.

It might well be said that the courts never should have been forced to decide these questions. These struggles effect not only the contestants in each particular case, but the entire community at large. As the courts have no settled legal principles to guide them, they have been forced to render their decisions upon the ground of public policy. As a result the decisions are influenced more or less by the personal opinions of the courts that render them.

It is submitted that this whole question, which is one of ever

[2] Butterick Pub. Co. v. The Union, 100 N. Y. Supp. 242 (1906); Christensen v. Supply Co., 110 Ill. App. 61 (1903).

[3] Parvis v. Local No. 500, *etc.*, 214 Pa. 348 (1906).

[4] Worthington v. Wuring, 157 Mass. 198 (1892). See also Boyer v. Western Union Tel. Co., 124 Fed. 246 (1906).

[5] 109 N. E. 643 (Mass. 1915).

[6] The employees had struck for higher wages and had conducted the strike in an unlawful manner by rioting. It was because the plaintiff had assisted in the unlawful carrying on of the strike that the court refused to give him relief from the subsequent blacklisting conducted by the employers.

growing importance, should be controlled by legislative action and that not until that time will this industrial warfare be governed by a definite and fixed set of rules and standards.

G. F. D.

FEDERAL EMPLOYERS' LIABILITY ACT—SCOPE AND APPLICATION—WHEN IS AN EMPLOYEE ENGAGED IN INTERSTATE COMMERCE?—The first section of the Federal Employers' Liability Act of 1908[1] provides that every common carrier by railroad, "while engaging" in interstate commerce, shall be liable for the injury or death of an employee, due to negligence, "while he is employed by such carrier in such commerce." To recover under this act, therefore, the employee must have been at the time of the injury engaged in interstate commerce. But when is a man employed in interstate commerce within the act? This question has frequently arisen since the passage of the act, and has in many instances produced considerable difference of opinion among the courts.

The clearest case is one in which the injured employee was at the time actually engaged in the operation of an interstate train. This would apply to engineers,[2] firemen,[3] brakemen,[4] and others working on such a train. Going a step further, it has been held that a workman who couples cars, some of which are engaged in interstate commerce and some not, is likewise engaged in such commerce.[5] Members of switching crews at railroad terminals while engaged in moving cars containing interstate shipments are also held to be employed in interstate commerce, within the meaning of the act.[6] But if at the moment of the accident the employee is switching cars which contain only interstate shipments, he is not within the act, although a few minutes before he was moving interstate cars.[7] Moreover if a yard clerk who has the duty of making a record of trains brought into and sent out of the terminal yard, is killed while performing these duties with respect to an interstate train, he is considered to fall within the act.[8] This may seem to extend the doctrine beyond its proper limits, but it is the rule of the United States Supreme Court.

The case of persons repairing instrumentalities connected with interstate commerce has caused the courts some difficulty. It seems

[1] Act Apr. 22, 1908, c. 149, § 1, 35 U. S. Stat. at L. 65.
[2] Borton v. Seaboard Air Line Rwy. Co., 157 N. C. 146 (1911).
[3] Rowlands v. Chicago & N. W. Rwy. Co., 149 Wis. 51 (1912).
[4] Vaughan v. St. Louis & S. F. Rwy. Co., 177 Mo. App. 155 (1914).
[5] Johnson v. Great Northern Rwy. Co., 178 Fed. 643 (1910).
[6] Montgomery v. Southern P. Rwy. Co., 64 Ore. 597 (1913).
[7] Illinois Cent. Rwy. Co. v. Behrens, 233 U. S. 473 (1914).
[8] St. Louis, S. F. & T. Rwy. Co. v. Seale, 229 U. S. 156 (1913).